

North Dakota Department of Transportation Special Provision: Disadvantaged Business Enterprise Program

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INTRODUCTION

The intent of this special provision is that all bidders use low quotes for the purpose of maintaining a level playing field for all participants in the bidding process and to sustain a discrimination free environment.

49 Code of Federal Regulations Part 26 (CFR) states that the contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractors shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

In addition, Title VI assures that no person or group of persons may, on the grounds of race, color, national origin, sex, age, or handicap or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs or activities administered by the Department. For information regarding Title VI, see the 2000 DBE Program Administration Manual.

The two paragraphs above apply to every contractor on the project, including every tier of subcontractor. It is the prime contractor's or subcontractor's responsibility to include the two above paragraphs in every subcontract.

The contractor is required to complete Forms A and C within the assigned time frames.

In this special provision:

“Apparent low bidder” means the bidder whose bid is read as low bid at the bid opening.

“Contractor” means ALL DBE (including MBE and WBE) and non-DBE firms, including prime contractors, subcontractors, suppliers, brokers, vendors, regular dealers, and manufacturers.

“Prime contractor” means bidders or contractors who are submitting proposals on this project.

SOLICITATION EFFORTS

- The following is a list of actions a bidder (including DBE primes) **may** use to obtain DBE participation.

1. ADVERTISE

- A. The prime contractor may place an advertisement soliciting DBE participation in either general circulation media or the supportive services newsletter before the bid opening. "General circulation media" means a newspaper in the area of a project or a trade association publication such as the Construction Bulletin.
- B. Prime contractors who submit their proposals by mail should say so in their advertisement. The ad should also state a date and time by which all quotes may be submitted for consideration, and where quotes should be sent.
- C. The supportive services newsletter is published two weeks before each bid opening. Requests for ads in the newsletter must be received, in writing, by the supportive services contractor no later than noon (Central), 2 weeks before the bid opening date. The address of the supportive services contractor is: Jim Laducer, Laducer & Associates, Inc., 2001 Missouri Drive, Mandan, ND 58554, phone 701/667-1980, fax 701/667-2970.

2. SIGN IN

Prime contractors may:

- A. Between 1 p.m. and 4 p.m. (Central) the day before the bid opening, either sign in, in person, or call in 701/258-7000 at the supportive services room at the Bismarck Doublewood Inn, 1-94 and Exit 159.
- B. Designate at that time which jobs they are bidding on.
- C. Between 4 p.m. and 7 p.m. (Central) the day before the bid opening, provide information (location, phone, and fax numbers) about where they can be contacted by businesses wishing to submit quotes, and have a representative available to receive and discuss quotes at that contact location or numbers.

DBE and non-DBE subcontractors and suppliers may:

- A. From 4:20 p.m. to 7 p.m. (Central) the day before the bid opening, copies of the prime contractors' sign-in sheets will be available in the supportive services room.

• **GUIDELINES FOR SUBMITTING QUOTES TO BIDDERS**

All businesses are **strongly encouraged** to follow these guidelines when quoting.

- A. By 7 p.m. (Central) the night before the bid opening, all DBE and non-DBE subcontractors and suppliers cease quoting.
- B. Indicate the date of the bid opening, job number, and project number being quoted.
- C. Include bid item numbers and units or quantities.
- D. Use bid items and quantities from the proposal rather than from the Notice to Bidders.
- E. Show all calculations on the quote.
- F. Indicate whether mobilization is included, cost of bond if required, and any other special conditions.
- G. Indicate if a quote does not include something required by the specifications for a particular bid item.
- H. Trucking quotes should include type and number of units available and their capacity.
- I. Provide separate quotes for each project (each quote on a separate page).
- J. All quotes for more than one bid item should indicate whether the bid items are tied or not tied.
- K. Large subcontractors should attach a copy of their Form A to their quote when submitting it to the prime contractor

• **SUBMITTING QUOTES TO DEPARTMENT OF TRANSPORTATION**

- By 8:00 p.m. (Central) the night before the bid opening, all suppliers and all tiers of subcontractors should submit a copy of all quotes given for each project. This information will be used to develop the bidders' list and monitor the low quote concept.

Information should be submitted to the DBE Liaison Officer, Civil Rights Office, North Dakota

- Department of Transportation, by fax (701/328-1965, 701/328-1420, 701/328-4545, 701/328-4928) or drop box in the supportive services room.

FORM A

By noon (Central) on the next work day following the bid opening, the apparent low bidder must submit Form A to the DBE Liaison Officer. Form A is a list of all low quotes being used by the apparent low bidder. Bidders are encouraged to use low quote, and accept all quotes for work and materials to be sublet, the two exceptions are as follows:

1. When the low bidder can give an acceptable explanation of why the low quote was not used.
2. When the low bidder chooses to do the work with their own firm.

FORM B OR COPIES OF QUOTES

Within 10 working days of the bid opening, **all bidders** must submit Form B or copies of all quotes received. Information must be submitted to the NDDOT DBE Liaison Officer, Civil Rights Office, 608 East Boulevard Avenue, Bismarck, ND 58505-0700. This information will be used to develop the bidders list and monitoring of the low quote concept.

FORM C

Within 10 working days after the bid opening, **all apparent low bidders** must submit a Form C for each DBE listed on Form A to the address below, unless NDDOT grants an extension of time.

- A. No award will be made on a project until all Form Cs, for each DBE, are submitted to the NDDOT. The contractor and DBE must both sign this form, which applies to all tiers of subcontractors working with DBEs.
- B. Form Cs may be faxed to NDDOT's DBE Liaison Officer, 701/328-1965 or mailed to the Civil Rights Office, 608 East Boulevard Avenue, Bismarck, ND 58505-0700.
- C. Signatures need not be original; faxed signatures are acceptable.
- D. If Form C contains additional pages or an attachment, each page or attachment must be signed by the intended DBE.
- E. If Form A and Form C contain different information (e.g., bid item numbers, quantities, or dollar amounts), the prime contractor must explain the difference in writing to NDDOT when submitting Form C.

FAILURE TO PROVIDE REQUIRED DOCUMENTATION

Prime contractors and subcontractors are encouraged to discuss the requirements of this special provision with all bidders providing quotes on a specific project.

Prime contractors may be denied future quoting or bidding privileges if they failed to provide copies of all quotes or Form B.

Apparent low bidders may be denied future quoting or bidding privileges for failure to submit Form A and Form C as required.

• LIST OF DBE/CONTRACTOR PARTICIPATION

- Generally, the DBE/Contractor Participation list is posted to the NDDOT web site: <http://www.state.nd.us/dot/dbebidinfo.html> two working days after the bid opening. For a paper copy of the DBE participation web site listing, contact the NDDOT DBE Liaison Officer, Civil Rights Office, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, fax 701/328-1965, phone 701/328-2576.

CONSTRUCTION PROGRESS CHART REQUIREMENT

Before the award of the contract, the apparent low bidder must create a construction progress chart for each DBE to be used on the contract (excluding oil haulers, suppliers, brokers, vendors, regular dealers, or manufacturers). The chart must state the type of work to be performed and when it will be performed.

The apparent low bidder must supply all charts to the Department and the appropriate chart to each DBE to be used on the contract.

AWARD OF CONTRACT

The contract award will be made to the bidder who submits the lowest responsive proposal meeting the prebid and preaward requirements.

CONTRACT MONITORING AND REPORTING

To verify DBE participation, the prime contractor must submit a completed copy of the DBE Participation Certification (SFN 14268), signed by the prime contractor and the DBE, to the project engineer upon completion of the contract. This includes DBEs used that were not

- included on Form A. The project will be monitored to ensure the DBE is performing a
- commercially useful function.
-
- The Department counts expenditures to a DBE contractor toward DBE goals only if the DBE is
- performing a commercially useful function on that contract.
-
- 1. A DBE performs a commercially useful function when it is responsible for execution
- of the work of the contract and is carrying out its responsibilities by actually
- performing, managing, and supervising the work involved. To perform a
- commercially useful function, the DBE must also be responsible, with respect to
- materials and supplies used on the contract, for negotiating price, determining
- quality and quantity, ordering the material, and installing (where applicable) and
- paying for the material itself. To determine whether a DBE is performing a
- commercially useful function, the Department must evaluate the amount of work
- subcontracted, industry practices, whether the amount the firm is to be paid under
- the contract is commensurate with the work it is actually performing and the DBE
- credit claimed for its performance of the work, and other relevant factors.
-
- 2. A DBE does not perform a commercially useful function if its role is limited to that of
- an extra participant in a transaction, contract, or project through which funds are
- passed in order to obtain the appearance of DBE participation. In determining
- whether a DBE is such an extra participant, the Department must examine similar
- transactions, particularly those in which DBEs do not participate.
-
- 3. If a DBE does not perform or exercise responsibility for at least 30 percent of the
- total cost of its contract with its own work force, or the DBE subcontracts a greater
- portion of the work of a contract than would be expected on the basis of normal
- industry practice for the type of work involved, the Department must presume that it
- is not performing a commercially useful function.
-
- 4. When a DBE is presumed not to be performing a commercially useful function as

- provided in paragraph 3C of 49 CFR Part 26.55, the DBE may present evidence to
- rebut this presumption. The Department may determine that the firm is performing a
- commercially useful function given the type of work involved and normal industry
- practices.
-
- 5. The Department's decisions on commercially useful function matters are subject to
- review by the concerned operating administration [Federal Highway Administration,
- Federal Transit Administration, or Federal Aviation Administration], but are not
- administratively appealable to USDOT.
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MAINTAINING RECORDS & TRACKING PAYMENTS

The Department will require prime contractors and subcontractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection, upon request, by any authorized representative of the NDDOT or USDOT. This reporting requirement also applies to any certified DBE.

- Prime contractors and subcontractors must keep a running tally of actual payments to DBEs for work committed to them at any time during the life of the contract. Prime contractors and subcontractors will be required to give NDDOT a record of payment by the tenth working day after the October-December quarter, the tenth working day after the January-March quarter, the
- tenth working day after the April-June quarter, and the tenth working day after each of the
 - months of July, August, and September. The record must contain the name of the prime contractor or subcontractor, the project number, and the amount paid to the DBE for the reporting period only. Send the record to the DBE Liaison Officer, Civil Rights Office, North Dakota Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700.

NDDOT may perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBEs equals or exceeds the dollar amount stated on Form C.

MONITORING AND ENFORCEMENT MECHANISMS

The Department will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, or referral to the USDOT Inspector General for action under Suspension and Debarment or Program Fraud and Civil Remedies rules) provided in §26.107. The Department will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

CONTRACTOR PARTICIPATION

North Dakota Department of Transportation, Civil Rights Office
SFN 52012 (12-2000)

FORM A

Contractor		Phone
Job No.	Project No.	Bid Opening Date

By noon (Central time) on the next work day following the bid opening, all apparent low bidders must provide a list of the contractors intended for use on this project to the NDDOT Civil Rights Office. The information provided may be submitted on this Form A or on a computer-generated form, giving the same information, attached to this Form A. If the prime contractor intends to use DBE quotes received from a subcontractor, the prime contractor **must** attach the subcontractor's Form A to the prime contractor's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. For each contractor, the specific bid item numbers to be performed and the total dollar value **must** be listed.
2. If the contractor is going to do only a portion of a bid item (supply, haul, etc.), this **must** be so noted, in parenthesis, after the bid item number.
3. If the information provided on Form C **differs** from the information provided on this Form A (bid item numbers, quantities, or dollar amounts), the prime contractor **must** provide, with the Form C, a written explanation for the difference.

The bidder **must** use the DBEs listed for the intended work indicated on Form A.

For DBE subcontractors, suppliers (regular dealers), and manufacturers, **list only the amount of work to be completed with each DBE's own forces and equipment.**

DBE trucking firms **must** list only the amount of hauling to be performed with each DBE's **own trucks and employees.**

DBE prime contractors **must** list the work they will perform with their **own forces and equipment** and any work subcontracted to or materials purchased from other DBEs.

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

FORM A (continued)

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

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Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Name of Contractor	
List Specific Bid Item Numbers, or Products to be Supplied	Total Dollar Value \$

Use additional pages, following the same format, if necessary.

The NDDOT DBE Liaison Officer can be contacted at:

Civil Rights Office
ND Department of Transportation
608 E. Boulevard Ave.
Bismarck, ND 58505-0700

digoe@state.nd.us
phone (701) 328-2576
fax (701) 328-1965

FORM B

Contractor		Phone ()
Job No.	Project No.	Bid Opening Date

Within 10 working days after the bid opening, for each project, all prime contractors **must submit either:**

- I a completed Form B or
- I copies of all quotes received

This includes information from all tiers of subcontractors for the project.

List below the names of all businesses, including subcontractors, suppliers, vendors, regular dealers, manufacturers, and brokers who provided you quotes for this project. This includes information from any large subcontractor who also provided you a quote on this project and their subcontractors, suppliers, vendors, regular dealers, manufactures, and brokers.

Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
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Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone ()
Mailing Address		Type of Work (See Reverse Side for Codes)

Use additional pages, following the same format, if necessary.

FORM B (continued)

A-1	Engineering - Professional services - design or construction inspections performed by an engineering firm.
A-5	Other - Other professional services such as supportive services and research contracts.
B-1	Grading/Drainage - Grading, drainage, clearing and related construction items.
B-2	Paving - Construction of base course, pavements and related items.
B-3	Structures/Buildings - Bridge Construction operations, including piling, substructure, superstructure, etc., and building construction, including plumbing, heating, electrical.
B-4	Trucking - For the hauling of earthwork or other materials for a construction project.
B-5	Traffic Control - Permanent traffic control items such as signs/signals, markings, and temporary traffic control items such as barricades and flagging.
B-6	Landscaping - Landscaping, seeding, sodding, erosion control and related items.
B-7	Other - Other construction activities such as lighting contracts and guard rail.
C-1	Supplies - The packaging and shipment of a product (materials, goods, and supplies) and the furnishing of BULK ITEMS which are incorporated in a construction project. <div style="display: flex; justify-content: space-between;"> <div> C-1 Aggregate C-2 Concrete C-3 Electrical C-4 General </div> <div> C-5 Petroleum Products C-6 Pipe C-7 Ready Mix </div> </div>
D	Manufacture - The physical production of materials and supplies through standard manufacturing processes obtained by a contractor for incorporation in a construction project.
E	Equipment - Purchases/rental of equipment for use on a specific construction project.

The DBE Liaison Officer can be contacted at:

CIVIL RIGHTS OFFICE
ND DEPT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700

E-mail: digoe@state.nd.us
Phone: (701) 328-2576
Fax: (701) 328-1965

NOTIFICATION OF INTENT TO USE DBE

North Dakota Department of Transportation, Civil Rights Office
SFN 52160 (Rev. 12-2000)

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FORM C

1. The prime contractor and any subcontractors who listed DBE Participation on Form A **must** complete a Form C for each of their respective, intended DBEs. The prime contractor is responsible for the completion and submission of a Form C for each DBE commitment made by any lower-tier subcontractor.
2. If the information on a Form C **differs** from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference **must** be provided with the Form C.
3. The Form C **must be signed** by the prime contractor or subcontractor and their respective, intended DBE. If Form C contains additional pages or an attachment, each page **must** be signed by the intended DBE. Signatures do not have to be original (faxed signatures are acceptable).
4. The forms **must** be returned to the NDDOT Civil Rights Office **within ten working days** after the bid opening. Forms may be faxed to the Civil Rights Office at (701) 328-1965, followed by a hard copy. **Award will not be made** until a Form C is received for each intended DBE listed on Form A.

This form is NOT a contract and does not take the place of any contract. It is an indication to NDDOT that all DBEs listed on Form A understand they will be used on this project.

Prime Contractor or Subcontractor	Project No.	
Intended DBE	Bid Opening Date	Job No.

Bid Item Nos.	Work Description	Units	Approx. Quantity	Unit Costs	Amount
	Total				

Comments	

Prime Contractor/Subcontractor Signature	Title	Date
Intended DBE Signature	Title	Date

The NDDOT DBE Liaison Officer can be contacted at the Civil Rights Office, ND Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700, digoe@state.nd.us, phone (701) 328-2576, or fax (701) 328-1965.